

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.M.JAMES

WEDNESDAY, THE 26TH JULY 2006 / 4TH SRAVANA 1928

Bail Appl..No. 3772 of 2006

CMP.2981/2006 of DISTRICT COURT, KOLLAM
(CRIME NO. 7/2006 OF KOLLAM EXCISE RANGE)
.....

PETITIONERS/ACCUSED 1 AND 2.

1. MURALEEDHARAN, S/O.BHASKARAN,
SIVANANDHALAYAM VEEDU, THIRUMULLAVARAM
PUNNANTHALA CHERRY, KOLLAM WEST VILLAGE,
KOLLAM TALUK.
2. CHELLAPPAN, S/O.LATE KESAVAN,
MANAMPALLITHEKKETHIL VEEDU, MUSLIM STREET,
KIZHAKKEKKARA MURI, KOTTARAKKARA VILLAGE.

BY ADV. SRI.T.M.ABDUL LATHEEF

RESPONDENTS: COMPLAINANT AND STATE.

1. THE EXCISE INSPECTOR, KOLLAM.
2. THE STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

ADDL. RESPONDENTS:-

3. COMMISSIONER OF EXCISE, THIRUVANANTHAPURAM.
4. THE PRINCIPAL SECRETARY OF TAXES,
GOVERNMENT OF KERALA,
THIRUVANANTHAPURAM.
5. THE CHIEF SECRETARY TO THE GOVERNMENT OF KERALA,
THIRUVANANTHAPURAM.
(Addl. Respondents 3, 4 and 5 are impleaded, as per order dated
28.6.2006 in B.A.No.3772/2006)

BY ADDL. PUBLIC PROSECUTOR V.K. MOHANAN

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION
ON 26/07/2006, ALONG WITH BA NO. 3773 OF 2006 AND BA
NO. 3791 OF 2006 THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

J.M.JAMES, J.

B.A. 3772/06, 3773/06 AND 3791/06

DATED THIS THE 26TH DAY OF JULY, 2006

O R D E R

The Bail Application No.3772/06 is preferred by accused 1 and 2, in C.R.No.7/2006 of Excise Range, Kollam. The offence alleged against them are under Section 57A of the Abkari Act and also under Section 22(a) of the 'Narcotic Drugs and Psychotropic Substances Act', 1985, in short 'the Act'. The petitioners were arrested on 24.5.2006. They remain in judicial custody thereafter.

2. Bail Application No.3773/06 is preferred by the very same persons, who are the accused 1 and 2, in C.R.No.103/2005 of Excise Range, Kollam, the offence alleged being, under Sections 57A and 22(a) of the Act. The arrest of these accused was also recorded on 24.5.2006.

3. The Bail Application No.3791/06 is also preferred by the very same petitioners who filed the above two applications, being the accused 1 and 2, in C.R.No.102/2005 of Kollam Excise Range, the offence alleged being, under Section 57A of the Abkari Act and 22(a) of the Act. They are also in judicial custody

from 24.5.2006, having recorded the arrest on that day.

4. When the above applications came up before this Court, various factors had been considered, including the mode of testing of toddy, detection of diazepam with the instruments that are available in the possession of chemical analysis laboratory in kerala, whether the toddy available in Kerala, tapped from the trees, are sufficient to supply the requirements and demands of the consumers, through the authorised shops so on and so forth.

5. On two occasions, the Commissioner of Excise filed the counter statements. However, the facts required for the just disposal of the questions raised, are not complete in those statements. Therefore, further clarifications were sought. The learned Additional public Prosecutor appeared in this case today and prayed for time.

6. The accused in these three applications are in judicial custody from 24.5.2006. The counsel submits that by applying the provisions under Section 167(2) of Cr.P.C., the petitioners may be released on bail.

7. In view of the above facts, I grant bail to the petitioners in all the three above crimes and release them from jail, subject to the following conditions:-

(a). Each petitioner shall execute separate bond in each crime, for Rs.25,000/-, with two solvent sureties, each for the like sum, to the satisfaction of the Judicial Magistrate of First Class-I, Kollam.

(b). The petitioners shall report before the investigating officer of the above cases, once in a week on every Monday, between 10.00 a.m and 11.00 a.m., for a period of three months, starting from 31.7.2006.

(c). The petitioners shall not leave the State of Kerala, till the final trial and disposal of the case.

All the three applications are allowed as above.

However, post these applications, along with B.A.No.3510/2006, after one week, for further hearing on the points, that had already been raised for consideration.

J.M.JAMES
JUDGE

The petitioners in all the three B.A.Nos.3772/06, 3773/06 and 3791/06 are same. The first petitioner was a salesman and the second petitioner a licensee of Toddy Shop No.TS/14/2005-06, at Kandachira of Kollam Excise Range. Both are accused Nos.1 and 2 respectively in C.R.No.7/2006

of Excise Range, Kollam.

2. The offence alleged against them are under Section 22(a) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act), and also under Section 55 (A) of the Abkari Act.

3. The allegation is that the accused had mixed a toxic substance, which is likely to endanger human life or cause grievous hurt to human beings, and also the same to act as an intoxicating drug. Therefore, the sample was sent for chemical analysis. It is submitted that one of the samples sent for chemical analysis, contained 1.89 mg diazepam per 100 ml sample. It is also further certified that diazepam is a psychotropic substance sold under the drug with Valium, campose etc. Obviously the above report reveal that there had been mixing of a substance, which is not permitted under the law, particularly with toddy.

4. There are number of similar cases reported and pending before this Court. The cases of such detection also come up before this Court. I am of the view that the authorities are not conscious of the seriousness of the matter and the toddy shops are continuously selling it, as could be seen from number of cases repeatedly reported and the bail

applications or other matters that are being filed before this Court. There are also cases of similar matters pending before the trial Courts in the subordinate judiciary. In such circumstances, it is necessary, in the interest of justice, and to save the public from danger of health hazards, to find out what is the dimension of the threat to the public health as well as the action taken by the authorities in preventing the consumption of noxious substances. To enable the same, it is necessary that the authorities concerned, are brought in the party array as respondents and they are heard. The complete data and statistics regarding the activities of the toddy shops, licensees or salesmen, the number of cases of mixing of toxic substances so far detected, the action taken to prevent the same and the health problem caused to the consumers are also to be collected and analysed. Therefore, for the just decision of this case, and also to prevent the harm that is being caused, to the consumers, it is necessary to examine the matter in detail. Hence implead the following, as additional respondents 3 to 5:-

- (a). The Commissioner of Excise, Thiruvananthapuram.
- (b). The Principal Secretary of Taxes, Government of

Kerala, Thiruvananthapuram.

(c). The Chief Secretary to the Government of Kerala,
Thiruvananthapuram.

5. The registry shall issue notice to the additional respondents 3 to 5 immediately, particularly as the petitioners 1 and 2 are in judicial custody, from 24.5.2006.

6. The respondents shall file a statement touching upon all the facts, particularly that had been discussed herein, as well as the other matters required for the decision of this matter.

7. Treat these petitions as part heard.

8. Bail Application No.3510/06 is preferred by the petitioner, who is the accused in C.R.No.9/2006, of Kanjirappally Excise Range. He is a licensee of a toddy shop No.T.S.20/2005-06. 'Diazepam' was found mixed with the toddy. The points raised in this petition are similar to the one, discussed above. Hence the bail application No.3510/06 is also treated as partly heard, and consider along with the other applications.

Post on 7.7.2006.

Hand over the order to the Public Prosecutor.

**J.M.JAMES
JUDGE**

mrccs

J.M.JAMES, J.

CRL.A.732/2000
JUDGMENT

21ST DAY OF JUNE,2006

